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October 2, 2013

VIA ECF

The Honorable A. Kathleen Tomlinson  
100 Federal Plaza  
Courtroom 910  
P.O. Box 9014  
Central Islip, New York 11722-9014

Re: *Clayton's Auto Glass et al. v. First Data Corporation et al.*,  
Case No. 12-CV-05018-JS-AKT

Dear Judge Tomlinson:

Defendants respectfully submit this letter in response to Plaintiffs' letter motion to compel Defendants' production of documents and responses to interrogatories. Because Plaintiffs' claims have since been dismissed by the District Court, the motion to compel should be denied as moot.

Plaintiffs filed their motion to compel on September 27, 2013. (Doc. 28.) On Monday, September 30, 2013, Judge Seybert granted in its entirety Defendants' motion to dismiss Plaintiffs' complaint for failure to state a claim. (Doc. 29.) Plaintiffs were granted leave to amend within 30 days as to two of their claims, but no amended complaint has yet been filed.

Discovery is limited to matters "relevant to any party's claim defense," Fed. R. Civ. P. 26(b)(1), and there are currently no claims pending before the Court. There is therefore no basis on which discovery could be granted, making Plaintiffs motion moot. See, e.g., *In re LaBranche Securities Litigation*, 405 F.Supp.2d 33, 335–36 (S.D.N.Y. 2005) (denying plaintiffs' motion to compel discovery as moot after motion to dismiss was granted in part with leave to replead).

Defendants therefore request that Plaintiffs' motion to compel be denied as moot.

Respectfully yours,



Robert D. Owen

cc: All Counsel of Record (via ECF)

